

2 of 2 DOCUMENTS

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HEADLINE: \$18 million down the drain?

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BODY:

RIALTO - City officials see their fight to clean up perchlorate-contaminated drinking water as a classic underdog story - a modest city going to court to get big corporations and the Pentagon to clean up a mess.

To City Attorney Bob Owen, it's like David and Goliath, with Rialto as David of course.

It might take more than a slingshot to do the job, though.

It might take \$300 million to clean up contamination discovered in 1997.

Thus Rialto has armed itself with a team of top-tier lawyers to pursue lawsuits against suspected polluters.

City leaders say they're on a righteous quest, but some water-cleanup experts and others who have dealt with similar challenges call it folly.

Taking on the likes of the Defense Department, Goodrich, and Black and Decker during the past decade has already cost the city the equivalent of the Police Department's annual budget.

Critics want to know what that money has bought beyond constant delays in court and before state regulatory boards. They also want to know why the city didn't seek the help of the U.S. Environmental Protection Agency, as other communities with similar

problems have.

"It's just beyond imagination how much money they've spent on this thing," said Anthony "Butch" Araiza, general manager of the West Valley Water District, which also serves water to Rialto residents.

Owen said the city has spent about \$18 million on lawsuits, legal investigators, water treatment, public relations and community meetings.

It sounds good to say the city shouldn't spend so much on attorneys, Owen said, but the city would have to pay much more to clean up the mess.

"Everybody hates lawyers," he said. "We know that."

Residents foot the bill

Rialto's legal battle is funded largely by a surcharge for customers of the city's water utility.

The surcharge starts at \$6.85 a month and rises based on usage. The city water agency serves about half of Rialto, meaning about half the residents fund the formidable perchlorate effort.

West Valley Water and the Fontana Water Company serve the rest.

If Rialto wins its case in court, residents will be reimbursed, Owen said.

The council also has allocated \$5 million from General Fund reserves to escalate the legal effort last year.

Rialto's best hope at getting perchlorate cleaned up quickly is the State Water Resources Control Board, which has planned August hearings on the contamination.

The board could order three suspected polluters, Goodrich, Pyro Spectaculars and Emhart Industries, which the city says is really Black and Decker, to remove the contamination.

"There's been a wealth of evidence that's been generated as a result of Rialto's litigation," said Kurt Berchtold, assistant executive officer for the Santa Ana Regional Water Quality Control Board and member of the advocacy team that will argue alongside Rialto during the state hearings.

But the companies' legal maneuvers have delayed those hearings numerous times. The state water board took over cleanup efforts because the Santa Ana board couldn't move forward.

"It's gone from bad to worse to untenable," said Michael Whitehead, president of the San Gabriel Valley Water Company, which owns Fontana Water.

Whitehead and Araiza have publicly talked about the benefits of bringing in the EPA to take over the cleanup.

The hearing delays have upset environmentalists as well.

"The corporations know how to use the legal system," said Penny Newman, executive director of the Riverside-based Center for Community Action and Environmental Justice, which will be a party in state hearings.

She defended the city's strategy and the amount of money it has spent.

"When you've been harmed, you go after the person who harmed you, which can be difficult for people of limited income," she said.

The idea is simple: Polluters should clean up their messes.

"Is it an Erin Brockovich scenario? You bet," Rialto City Administrator Henry Garcia said at a council meeting.

But "Erin Brockovich" is the wrong movie to emulate because the contamination is too complicated, Whitehead countered. He suggested watching "A Civil Action," in which the EPA takes over because the case costs too much money to put on in court.

"It's a very conventional legal strategy. It's also a failed legal strategy," Whitehead said.

He and Araiza recommend using the model the San Gabriel Valley used to clean up contaminants including perchlorate: a regional coalition of entities working with the EPA.

Comparing situations

To remove perchlorate discovered in 1997 from Baldwin Park, Whitehead said the San Gabriel Valley Water Company spent less than \$1 million on legal fees. Polluters and the U.S. government paid most of the cost.

Wayne Praskins, an EPA Superfund project manager, said that if a polluter refuses to follow an EPA cleanup order but is found responsible in court, the polluter faces penalties of three times the cleanup cost.

"I think going with EPA and the Superfund program is probably the strongest mechanism a city or community has. I'm always amazed that people - communities - shy away from that," Newman said.

But the EPA doesn't have super powers. The San Gabriel Valley was already a Superfund site as early as the mid-1980s, which made it easier and faster to get perchlorate cleaned up.

"It's a tough comparison," Praskins said. "It took a long time to reach agreements in the San Gabriel Valley."

To Owen, the city attorney, comparing the Rialto-Colton Basin cleanup to that of the San Gabriel Valley is like comparing apples to oranges. The EPA started looking at contamination in the San Gabriel Valley in the 1970s. When it was looking at whether to go the EPA route, Rialto looked at a number of Superfund sites, and in every case it took between 17 and 27 years to start cleaning the contamination up, Owen said.

"And that was simply unacceptable to us."

The EPA has followed the case but hasn't yet decided whether to take over, Praskins said.

A combination of factors kept the EPA from taking the lead from the get-go. Rialto thought the EPA would take too long. Owen has also said he was afraid a large Superfund site in the city would create a stigma.

EPA officials also thought state regulatory agencies could handle the case.

Berchtold speculated that Whitehead and Araiza might be pressing for an EPA takeover because the state would probably not order cleanup of some West Valley and Fontana wells.

A fault separates those wells from the Rialto-Colton Basin, and Santa Ana Regional Water Quality Control Board staffers said they can't prove the suspected Rialto-area polluters caused the contamination in those wells.

Whitehead says the board is in over its head.

Despite the fault, Araiza prefers a regional approach and said Rialto is selfish for excluding other water agencies.

"I just don't understand being that territorial about this."

Owen said he's just looking out for Rialto. He doesn't want to divide money equally because the problem doesn't affect all agencies equally.

Rialto's City Council is getting uncomfortable with the cost. The council called for an audit of how much the city has spent on perchlorate, but members insist there will be no strategy change.

The newest councilman, Joe Baca Jr., thinks there should be.

"I'm concerned about there being a blank check out there for the attorneys," he said.

He said he can't even find out how much the city has spent.

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"We have to look at it as a regional approach," he said.

Owen, on the other hand, doesn't want to change course now.

"This city's involved in possibly its largest legal battle ever in its history," he said.

"Now is not the time to blink." What is perchlorate?

Perchlorate is used to produce such explosives as fireworks and rocket fuel.

It flows from industrial sites on Rialto's north end through the city and into Colton.

It's not clear how dangerous perchlorate is, but a study by the Centers for Disease Control and Prevention released last year says even low concentrations of perchlorate can affect the thyroid gland. Treatment systems remove perchlorate from the water before it reaches residents.

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